

JONES DAY

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July 3, 2013

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VIA EMAIL AND FIRST CLASS MAIL

John Hultgren, Esq.
Enforcement Counsel
U.S. Environmental Protection Agency
Office of Environmental Stewardship (OES04-2)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: New Hampshire Dioxane Site
Atkinson, NH

Dear Mr. Hultgren:

I am responding on behalf of Gould Electronics Inc. (“GEI”) to correspondence from Mr. Stanley D. Chin of U.S. EPA dated June 18, 2013 with respect to the above-referenced site. The correspondence was received at GEI’s corporate headquarters (34929 Curtis Blvd., Eastlake, Ohio) on June 20, 2013. Mr. Chin’s letter required GEI to inform U.S. EPA within 10 business days of receipt (i.e., by July 5, 2013) whether GEI would agree to fund a \$2 million construction project related to a closed manufacturing facility that GEI never owned or operated.

As a threshold matter, GEI objects to U.S. EPA’s unreasonable and unnecessary imposition of an impossibly short deadline for GEI’s decision, particularly given the limited information provided by U.S. EPA regarding GEI’s alleged liability for the former Johnson & Johnston Associates, Inc. (“JJA”) facility in Hampstead, New Hampshire. Mr. Chin’s letter does not provide GEI with either (i) the referenced technical material on which the Agency bases its conclusion that releases of hazardous substances at the former JJA facility – and only the JJA facility -- have caused contamination of residential water wells, or (ii) the basis for U.S. EPA’s allegation that GEI is “the successor” to JJA. GEI is reasonably entitled to evaluate such information, which U.S. EPA could easily have provided, before making the sort of commitment required by Mr. Chin.

Nor was the short deadline imposed on GEI necessary, as it is clearly based on information that U.S. EPA and New Hampshire Department of Environmental Services have had for more than a year. Specifically, the “Action Memorandum” enclosed with Mr. Chin’s letter indicates that the two agencies have been working together since at least March 2012 and that by May 2, 2012 New Hampshire DES had concluded that the JJA facility is “the likely source” of the groundwater contamination upon which U.S. EPA’s project is based. The agencies clearly

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could have provided GEI with more than two weeks to evaluate and respond to the complex technical and legal allegations made in Mr. Chin's letter.

Since GEI has not had a reasonable opportunity to collect and evaluate information necessary to assess its alleged liability, this response should be viewed as preliminary and subject to revision and supplementation as GEI receives additional information. I have submitted to U.S. EPA today, under separate cover, the enclosed request for the relevant information under the Freedom of Information Act and would appreciate your assistance in expediting the Agency's response, so that GEI can conduct the sort of inquiry that is reasonably necessary to properly assess and respond to U.S. EPA's allegations and \$2 million demand.

Since receiving Mr. Chin's letter, GEI has determined that it never owned or operated the former JJA facility that U.S. EPA alleges is a likely source of contamination discovered by New Hampshire DES in certain residential wells. Mr. Chin's letter does not appear to suggest otherwise, stating that "JJA has potential liability for the Site as a previous operator at the time of disposal of a hazardous substance" and that U.S. EPA "has reason to believe" that GEI is "the successor" to JJA.

Mr. Chin does not explain the basis for U.S. EPA's belief that GEI is the successor to JJA, but the information GEI has been able to review thus far does not support that conclusion. GEI owned the stock of JJA from approximately October 2003, after the former JJA facility had ceased operations, until the company was dissolved in February 2005. The real property on which the former JJA facility is located was owned by DiJohn Realty Co. throughout this period. To GEI's knowledge, no hazardous substances were stored, used or released at the former facility during this time period.

GEI did not merge with JJA and, as I assume you are aware, the U.S. Supreme Court has held that the ordinary parent-subsidary relationship does not subject a parent corporation to CERCLA liability arising from the conduct of its subsidiary. Moreover, even if GEI was somehow liable for the operations of its subsidiary, GEI is aware of no information indicating that releases of hazardous substances occurred during the period it was JJA's parent.

GEI, which was then known as Nikko Materials USA, Inc., acquired the stock of JJA from Gould Electronics Inc., an Ohio corporation that has since been dissolved. Nikko Materials USA, Inc. (an Arizona corporation) did business as "Gould Electronics" from October 2003 to February 27, 2006, when it formally changed its name to Gould Electronics Inc.

Based on the dates of the releases described in U.S. EPA's Action Memorandum and the information available in GEI's files, it appears that the contamination upon which U.S. EPA's involvement is based occurred well before GEI's 17-month ownership of JJA stock. The former Gould Electronics Inc. acquired the stock of JJA in December 1999 from two individuals, James A. Johnston and Kenneth A. Poirier, who disclosed the existence of groundwater contamination

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at the JJA facility at the time they sold the company, and who contractually agreed to conduct any assessment, remediation and monitoring required by the New Hampshire DES or other environmental agencies. It is GEI's understanding that Messrs Johnston and Poirier owned and operated JJA prior to the December 1999 stock sale, including at the times of the documented releases specified in Mr. Chin's letter. GEI also believes that Mr. Johnston was substantially involved in, and may have been the primary owner of, DiJohn Realty Co., which owned the real property at the former JJA facility when the alleged releases occurred.

Mr. Chin's characterization of CERCLA Section 106 and U.S. EPA's unilateral order authority was misleadingly incomplete and appears designed to coerce GEI into agreeing to pay for or perform work before GEI has received a reasonable opportunity to assess its potential liability. While Mr. Chin cites the provisions of CERCLA Sections 106 and 107 that relate to recovery of civil penalties and treble damages, he omits any reference to the statutory requirement in both sections that only a failure to comply "without sufficient cause" would expose GEI to such sanctions. The current record, including U.S. EPA's failure to provide GEI with a reasonable opportunity to evaluate the claim and the absence of an imminent and substantial endangerment justifying the rushed installation of a water line, arguably provides such "sufficient cause."

Moreover, while GEI is sensitive to the fact that residential wells have apparently been contaminated, the technical information does not support U.S. EPA's decision to treat the situation as an emergency that warrants a piecemeal remedial approach in lieu of assessing the site as a whole and developing a remedy to addresses both the source and hazardous substances that have migrated from the source. Although the Action Memorandum's "Endangerment Determination" relies heavily on alleged exceedances of U.S. EPA's Removal Management Levels at the former JJA facility (where no response action is proposed), Table 1 of the Action Memorandum indicates that no contaminants exceed RMLs in the relevant residential wells and the only contaminant that has ever been detected above its applicable drinking water standard (DCE) last exceeded that level in May 2004. GEI respectfully submits that the need for such an expedited response action¹ should be based on the conditions where the response action would be performed and it is not clear to GEI that the conditions reflected in Table 1 present an imminent

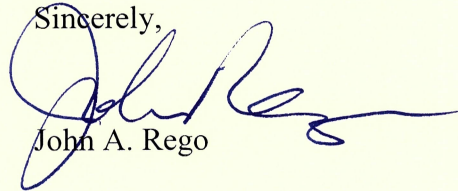
¹ GEI does not have sufficient information at this time to accept U.S. EPA's characterization of the proposed response action as a removal action under CERCLA and the National Contingency Plan. The Action Memorandum correctly characterizes the proposed water line as a "permanent solution," which is generally indicative of a remedial action rather than a removal action. *See, e.g.* 40 C.F.R. § 300.415(e)(9) ("Provision of alternative water supply—where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.") Moreover, the Action Memorandum's argument that less-permanent options would not "sufficiently reduce dioxane levels" does not squarely address the apparent fact that no MCLs or RMLs are being exceeded.

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and substantial endangerment sufficient to justify the rushed installation of a \$2 million water line. This is especially true in this instance, because the proposed water line project will not materially affect the concentrations of hazardous substances at the former JJA facility or reduce their potential migration from the facility.

In short, while GEI understands U.S. EPA's desire to use its available authorities to provide financial assistance New Hampshire DES and the private well users in Atkinson, the Agency's effort to rush GEI into making an uninformed commitment to perform a \$2 million project is unreasonable and unjustified under the facts currently available to GEI. GEI is prepared to assess any additional information that U.S. EPA is willing to provide to support U.S. EPA's allegations of liability, and to provide U.S. EPA with additional assistance in identifying those persons that actually owned or operated the former JJA facility at the time that hazardous substances may have been released into the environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Rego", is written over the typed name.

John A. Rego

Enclosure

cc: Thomas N. Rich (w/encl.)

Preview Request

Contact Information

Prefix :	Mailing Address Location : United
First Name : John	States/U.S. Territories
Middle Initial :	Address Line 1 : 901
Last Name : Rego	Lakeside Ave.
Organization :	Address Line 2 :
Email Address :	City :
jreg@jonesday.com	Cleveland
Phone Number : 216-586	State/Province : Ohio
-7542	Zip Code/Postal Code : 44114
Fax Number :	

Agency and Fee Information

Agency : U.S Environmental Protection Agency
Sub-Agency : Region 1
Will Pay Up To : \$ 250.00

Description :

See Attached File

Request a Fee Waiver

Make Request ? No

Request Expedited Handling

Make Request ? Yes

See Attached File

Attach Supporting Files

Attached File	Type	Size (MB)
<i>Document1.pdf</i>	PDF	0.03

☐ Agree to Privacy Act Statement. I have read the Privacy Act Statement and agree to the terms set forth.

☐ Affirmation. Pursuant to 28 USC § 1746, I declare and affirm that under penalty of perjury under the laws of the United States of America that all of the foregoing information, statements, and signatures submitted in connection with this request and in any supporting documents are true and correct to the best of my knowledge.

Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552 et seq., I request that the United States Environmental Protection Agency ("EPA") search all of its files to provide copies of all records, including, without limitation, computer files and other electronic media, relating to:

1. The "New Hampshire Dioxane Site" in Atkinson, Rockingham County, NH, CERCLIS ID# NHN000106120, Site ID# 01KA (hereinafter referred to as the "Site"); and
2. Johnson & Johnston Associates, Inc., 130 Route 111, Hampstead, NH 03841-5332, EPA Registry ID # 110000314071.

The requested information is needed in connection with an administrative proceeding (EPA's proposed "time-critical" removal action for the Site) and is critical to preserving my client's due process rights. Accordingly, pursuant to EPA policy, I request expedited processing of this request. The On-Scene Coordinator for the Site is John McKeown (617-918-1793), the Enforcement Coordinator for the Site is Tina Hennessy (617-918-1216), and the Enforcement Counsel for the Site is John Hultgren, Esq. (617-918-1761). These individuals should be able to assist in expeditiously identifying responsive records. In any event, I understand that EPA has no more than twenty (20) working days to respond to this request.

Responsive records may be provided in whatever form (electronic or paper) that will produce the fastest response. Responsive electronic records may be provided as email attachments. If some responsive records are more easily accessible than others, I would appreciate receiving multiple partial response, rather than having all documents held for a single response.

If, in responding to this request, EPA determines that any otherwise responsive information will not be provided because it constitutes confidential business information or is otherwise exempt under 5 U.S.C. Section 552(b), state the general nature of the information being withheld and the legal ground upon which disclosure has been denied. Wherever a record contains information for which you assert that a statutory exemption applies, you may redact such allegedly exempt information and should provide the remainder of the record.

I agree in advance to pay up to \$250.00 of necessary fees incurred responding to this request. If it appears that the costs may exceed \$250.00, please call me prior to incurring the expense. Thank you for your courtesy and cooperation.